

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CARMEN TAVERAS, et al.,

Plaintiffs,

– against –

LUIS FERNANDEZ,

Defendant.
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10 Civ. 1550 (TPG)(LMS)

OPINION

On February 24, 2010, plaintiffs, proceeding pro se, filed their complaint. The case was initially assigned to the Honorable Stephen C. Robinson. Judge Robinson referred the case to Magistrate Smith for all matters. The case was subsequently transferred to this court.

On July 8, 2010, a Deputy Clerk for Magistrate Smith sent plaintiffs a Rule 4(m) notice, giving plaintiffs 30 days in which to respond.¹ Plaintiffs contacted the Clerk's Office in the White Plains Courthouse and spoke to the Pro Se Clerk. Plaintiffs claimed they were unaware of the requirements of service of process. Magistrate Smith therefore authorized the issuance of a supplemental summons, even though plaintiffs were well beyond the 120 days allowed for service. The Pro Se Clerk mailed the supplemental summons to plaintiffs on August 11, 2010. On September 9, 2010, an Affirmation of Service of the Supplemental Summons was filed with the Clerk's Office. The

¹ The 4(m) notice sent to plaintiff Johnny Rodriguez was returned as undeliverable with no forwarding address available.

Affirmation stated that service had been made by certified mail, which is not proper under Rule 4 of the Federal Rules of Civil Procedure. Additionally, the Clerk's Office forwarded to Magistrate Smith's chambers a copy of a letter from Benjamin Galloway to one of the plaintiffs. In it, Mr. Galloway informed plaintiff that he was defendant's attorney in defendant's pending criminal matter only, and that he would not accept service in the civil action.

On October 5, 2011, this court issued an order that if plaintiffs failed to properly serve the complaint by November 7, 2011, this action would be dismissed. On November 4, 2011, the court issued another order after having received a letter from plaintiff Marta Cabrera requesting additional time to serve the complaint. The court granted plaintiffs an additional 120 days to serve the complaint and instructed that if plaintiffs failed to properly serve the complaint by March 5, 2012, this action would be dismissed.

On March 1, 2012, Magistrate Smith held a status conference wherein plaintiffs represented that they had served defendant Fernandez. At that conference, Magistrate Smith granted plaintiffs permission to move for default judgment against defendant and set the deadline for filing said motion as April 16, 2012. Plaintiffs failed to file their motion by that date, and they failed to request additional time to do so.

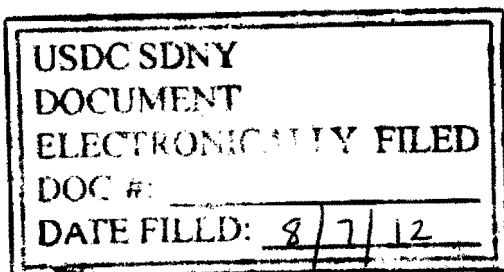
On May 8, 2012, Magistrate Smith issued another order directing that plaintiffs had until June 8, 2012, to file their Motion for Default Judgment, and that failure to do so would result in Magistrate Smith recommending dismissal of this action.

Plaintiffs have failed to file their Motion for Default Judgment, and they have failed to request additional time in which to do so. Thus, on June 19, 2012, Magistrate Smith issued a Report and Recommendation recommending that the court should conclude that this action be dismissed with prejudice for plaintiffs' failure to prosecute. The Report and Recommendation informed plaintiffs that, pursuant to 28 U.S.C. § 636(b)(1), as amended, and Fed. R. Civ. P. 72(b), the parties had fourteen (14) days, plus an additional three (3) days, pursuant to Fed. R. Civ. P. 6(d), or a total of seventeen (17) days, see Fed. R. Civ. P. 6(a), from the date of the Report and Recommendation, to file written objections. Neither plaintiffs nor defendant have filed any objection.

The court has reviewed the Report and Recommendation and adopts its proposed findings. For the reasons set forth by Magistrate Smith, the motion is dismissed.

SO ORDERED.

Dated: New York, New York
August 7, 2012



A handwritten signature in cursive script, reading "Thomas P. Griesa".

Thomas P. Griesa
U.S. District Judge